

CHARLIE D. JACKSON, #1127769,)	No. C 15-0194 CRB (PR)
)	
Plaintiff(s),)	ORDER GRANTING MOTION
)	TO STAY ACTION UNDER
v.)	THE SERVICE MEMBER
)	RELIEF ACT, 50 U.S.C. § 522,
SZMARCIARZ, Correctional Officer,)	AND ADMINISTRATIVELY
)	CLOSING CASE
Defendant(s).)	
)	(Dkt. #16)

Plaintiff, a prisoner at the Northern Nevada Correctional Center in Carson City, Nevada, filed the instant pro se action for damages under 42 U.S.C. § 1983 alleging that on October 8, 2012, while he was incarcerated at San Quentin State Prison (SQSP) in San Quentin, California, Correctional Officer Szmarczyk used excessive force and retaliated against him when Szmarczyk ran up to plaintiff screaming “snitch” and “rat,” and then “slammed plaintiff’s face against the bars of [his] cell thus causing the plaintiff to split his lip open.” Dkt. #1 (Compl.) at 4. Per order filed on May 29, 2015, the court found that, liberally construed, plaintiff’s allegations appear to state a cognizable § 1983 claim for use of excessive force and an arguably cognizable § 1983 claim for retaliation, and ordered the United States Marshal to serve Szmarczyk (defendant).

1 Defendant now moves for a stay of this action under the Service Member
2 Civil Relief Act (SCRA), 50 U.S.C. § 522, until 30 days after he is released from
3 active military service. Plaintiff has filed an opposition and defendant has filed a
4 reply.

5 II.

6 SCRA provides that at any stage before final judgment in a civil action in
7 which a party to the action is in military service, the court shall upon application
8 by the service member stay the action. 50 U.S.C. § 522(b)(1). But although
9 subdivision (b)(1) uses the term “shall,” a stay is not mandated solely upon
10 finding an applicant qualifies under SCRA. Boone v. Lightner, 319 U.S. 561,
11 565-69 (1943). The court has the discretion to determine whether a service
12 member is entitled to a stay under SCRA. Id. As the Supreme Court has held,
13 however:

14 [SCRA] is always to be liberally construed to protect those who
15 have been obliged to drop their own affairs to take up the burdens
16 of the nation. The discretion that is vested in trial courts to that end
17 is not to be withheld on nice calculations as to whether prejudice
Absence when one’s rights or liabilities are being adjudged is
usually prima facie prejudicial.

18 Id. at 575.

19 III.

20 In support of his request for a stay, defendant submits the Secretary of the
21 Air Force’s order (Request and Authorization for Active Duty Training/Active
22 Duty Tour (AF Form 398)) requiring him to report for active duty on July 7, 2015
23 through March 2, 2016. Defendant also declares under penalty of perjury that
24 because he has been deployed with the Air Force for active military service in the
25 country of Jordan through at least March 2, 2016, he will be unable to litigate this
26 civil action. Specifically, he will be unable to appear in court, confer with his
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1 attorney, respond to discovery or assist with the preparation of any dispositive
2 motions that his counsel may file on his behalf. Defendant accordingly seeks a
3 stay of all proceedings in this action under SCRA until 30 days after he is
4 released from active military service.

5 Good cause shown, defendant's motion for a stay of this action under
6 SCRA (dkt. #16) until 30 days after he is released from active military service is
7 GRANTED. Plaintiff's objection to a stay on grounds that relevant documents
8 and evidence may be lost is unpersuasive because defendant's counsel "affirms
9 that he has taken the appropriate steps to preserve existing relevant documents
10 and evidence in this case." Dkt. #21 (Reply) at 2.

11 IV.

12 The clerk is instructed to ADMINISTRATIVELY CLOSE the case.
13 Nothing further will take place in this case until defendant is released from active
14 military service and, within 30 days thereafter, moves to reopen the case and lift
15 the court's stay under SCRA.

16 Defendant is warned that failure to move to reopen the case and lift the
17 court's stay within 30 days of his release from active military service will result
18 in sanctions.

19 SO ORDERED.

20 DATED: August 26, 2015

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22 CHARLES R. BREYER
23 United States District Judge
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